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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/660,806

09/11/2003

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7068

757 7590 05/23/2008  
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EXAMINER

WONG, LESLIE A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

05/23/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |  |  |
|------------------------------|--------------------------------------|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/660,806 | <b>Applicant(s)</b><br>LIGHTFIELD ET AL. |  |
|                              | <b>Examiner</b><br>Leslie Wong       | <b>Art Unit</b><br>1794                  |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 August 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 and 14-26 is/are pending in the application.
- 4a) Of the above claim(s) 20-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 14-19, 25 and 26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

This application contains claims 20-24 are drawn to an invention nonelected with traverse in the reply filed on October 27, 2006. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8, 14-19, 25, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gimelli et al (WO 00/70969), Bauer et al (WO 00/70971), Bauer et al (WO 00/70970), Spanier (EP 0201399), Eisfeldt (WO 81/02377), or Baer et al (WO 91/02463) in view of Peng (US 4105803) and Yoder et al (US 5486375).

Gimelli et al (WO 00/70969) disclose an acidified, shelf stable, non-fermented dairy-based food product comprising an acidifying agent and a gum such as cellulose (see entire document, especially page 1, lines 4-6; page 2, lines 9-14; page 3, lines 5-17; Examples 2, 7, and 9; and claims 1, 6, and 7).

Bauer et al (WO 00/70971) disclose an acidified, shelf stable, non-fermented dairy-based food product comprising an acidifying agent and a gum, such as cellulose (see entire document, especially Examples 3, 8, 9 and Claim 9).

Bauer et al (WO 00/70970) disclose an acidified, shelf stable, non-fermented dairy-based food product comprising an acidifying agent and a gum, such as cellulose (see entire document, especially Examples 3, 8, 9 and Claims 1 and 4).

Spanier (EP 0201399) discloses an acidified, shelf stable, non-fermented dairy-based food product comprising an acidifying agent and a gum, such as guar (see entire document, especially page 25, line 2 to page 27, line 11; Example 1; and Claims 1, 3, and 26).

Eisfeldt (WO 81/02377) discloses an acidified, shelf stable, non-fermented dairy-based food product comprising an acidifying agent and a gum (see entire document).

Baer et al (WO 91/02463) disclose an acidified, shelf stable, non-fermented dairy-based food product comprising an acidifying agent and a gum, such as cellulose, guar, and mixtures thereof (see entire document, especially page 19, lines 1-12; page 26, line 30 to page 31, line 21; and Example 3).

The claims differ as to the specific acidulant.

Peng (US 4105803) discloses calcium sulfate as a conventional acidulant and disclose cellulose as a conventional gum (see entire patent, especially column 9, lines 35-61).

Yoder et al (US 5486375) disclose sodium sulfate, cellulose, and guar as conventional in the art (see entire patent, especially column 3, lines 25-28 and column 4, lines 14-28)

It would have been obvious to a person of ordinary skill in the art, at the time the invention was made, to use the acidulants as taught by Peng and Yoder et al in that of

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Gimelli et al (WO 00/70969), Bauer et al (WO 00/70971 and WO 00/70970), Spanier (EP 0201399), Eisfeldt (WO 81/02377), and Baer et al (WO 91/02463) because the use of sulfates as acidulants is conventional in the art. The selection and manipulation of acidulants is well-within the skill of the art. Applicant is using known components for their art-recognized function to obtain expected results.

Applicant's arguments with respect to claims 1-8, 14-19, 25, and 26 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is 571-272-1411. The examiner can normally be reached on Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Leslie Wong/  
Primary Examiner, Art Unit 1794

LAW  
May 21, 2008